a

RE MOHD KASSIM SULONG, EX P SITI AMINAH DOON

HIGH COURT MALAYA, KUALA LUMPUR
ABDUL AZIZ MOHAMAD J
b [BANKRUPTCY NO: D2-29-532-1996]
17 DECEMBER 1997

BANKRUPTCY: *Act of bankruptcy - Bankruptcy Act 1967, s. 3(1)(i) - "Final judgment or final order" - Whether includes judgment or order of Syariah Court - Intention of Legislature - Whether only final judgments and orders of*
c *secular courts intended - Whether bankruptcy notice bad - Whether there was an act of bankruptcy within definition of s. 3(1)(i) of Bankruptcy Act 1967 - Whether there was basis for bankruptcy petition*

BANKRUPTCY: *Jurisdiction - Syariah Court - Whether has jurisdiction in bankruptcy matters*
d

The judgment creditor ('the creditor') had earlier obtained a consent order from the Syariah Court against the judgment debtor ('the debtor') for the sum of RM1,515,000 ('the judgment sum'). Subsequently, the creditor filed a bankruptcy notice against the debtor. The notice was duly served on the debtor
e pursuant to s. 3(1)(i) of the Bankruptcy Act 1967 ('the Act'), and, when the debtor failed to settle the judgment sum, the creditor filed a bankruptcy petition against him. The senior assistant registrar struck out the petition and the creditor appealed to the instant court. The sole issue which arose for determination was whether s. 3(1)(i) of the Act applies to a judgment or order
f of the Syariah Court.

Held:

[1] The Syariah Court is an exclusive or exceptional court in that it has jurisdiction only over persons professing the religion of Islam, and in
g respect only of matters pertaining to the enforcement or administration of Islamic law or the religion of Islam. Accordingly, the Legislature could **not** have intended s. 3(1)(i) of the Act to encompass the judgments or orders of the Syariah Court.

[2] Only the secular courts, namely, the High Court, the Sessions Court and
h the Magistrates Court, are expressly mentioned in the case of an act of bankruptcy under s. 3(1)(e) of the Act. If the Legislature had intended s. 3(1)(e) or (i) of the Act to include the judgments or orders of the Syariah Court, it would have so provided expressly.

i

[3] Therefore, the creditor's bankruptcy notice was bad and there was no act of bankruptcy within the definition s. 3(1)(i) of the Act. In the result, there was no basis for the creditor's petition and the senior assistant registrar had correctly struck it out.

Obiter dictum

[1] It is beyond dispute that the Syariah Court has **no** jurisdiction in matters of bankruptcy.

[Appeal dismissed.]

Legislation referred to:
Bankruptcy Act 1967, s. 3(1)

For the creditor - Varghese Onny (M Menon with him); M/s Jaffar & Menon
For the debtor - Fakhrul Azman A Hasan (Ahmad Al-Turmizi Yusof with him); M/s Shahinuddin & Ranjit

Reported by Gan Peng Chiang

JUDGMENT

Abdul Aziz Mohamad J:

On 6 December 1993 the Syariah Court at Shah Alam, Selangor Darul Ehsan, made a consent order by which the judgment debtor was ordered, *inter alia,* to pay the judgment creditor a sum of RM1,515,000 comprising *mutaah,* compensation in respect of certain shares, and costs.

On 27 February 1996 the judgment creditor filed a bankruptcy notice requiring the judgment debtor to settle the judgment sum. The notice was duly served on the judgment debtor on 6 March 1996 pursuant to para. (i) of s. 3(1) of the Bankruptcy Act 1967. The judgment debtor failing to settle the judgment sum and the judgment creditor regarding that the judgment debtor had thereby committed an act of bankruptcy, the judgment creditor on 6 August 1996 filed a bankruptcy petition against the judgment debtor.

On the application of the judgment debtor, the learned Senior Assistant Registrar struck out the petition. The judgment creditor now appeals.

Paragraph (i) of s. 3(1) sets out one of a list of cases, from paras (a) to (j), in which a person commits an act of bankruptcy. The case of para (i) is, as far as material in this appeal, set out as follows:

> (i) if a creditor has obtained a final judgment or final order against [the debtor] for any amount and ... has served on him ... a bankruptcy notice under this Act requiring him to pay the judgment debt or sum ordered to be paid ... or to secure or compound for it to the satisfaction of the creditor or the court; and he does not within seven days after service of the notice ... comply with the requirements of the notice ...

Having heard submissions, I think the only question that I need to decide in this appeal is whether para. (i) applies to a judgment or order of the Syariah Court. If it does, the bankruptcy notice was good and the petition is founded on an act of bankruptcy and is sound. In that case, the question of jurisdiction of the High Court in the light of cl. (1A) of art. 121 of the federal Constitution, about which there has been some amount of submission, would not arise because it is not disputed that the Syariah Court has no jurisdiction in matters of bankruptcy. If on the other hand, para. (i) does not apply to a judgment or order of the Syariah Court, the bankruptcy notice was bad and there was no case of an act of bankruptcy under para. (i) and the petition had no basis and was correctly struck out.

The final judgment or final order mentioned in para. (i) has, of course, to be a final judgment or order of a court. The question is whether the court that is intended includes a Syariah Court.

The 1967 Act replaced and repealed the Bankruptcy Ordinance 1959, which was enacted by the Yang di-Pertuan Agong with the advice and consent of the Legislative Council. Section 3 of the 1967 Act, including para (i), repeated s. 3 of the 1959 Ordinance.

The question is one of intention of the legislature. Did it intend, when it enacted the 1959 Ordinance, and later the 1967 Act, to include a Syariah Court among the courts giving a final judgment or final order mentioned in para. (i)? I would hazard the answer that it did not. My reason for the answer is that the Syariah Court is an exclusive or exceptional court in that it has jurisdiction only over persons professing the religion of Islam and in respect only of matters pertaining to the enforcement or administration of Islamic law or the religion of Islam, and the legislature could not have intended to include such a court.

If the legislature had intended to include the Syariah Court, it would have done so expressly. In the absence of express inclusion of the Syariah Court, I would assume that the legislature intended the final judgment or final order to be that of the secular courts, namely the High Court, the Sessions Court and the Magistrates Court. These courts are expressly mentioned in the case of an act of bankruptcy under the earlier para (e), which is as follows:

(e) if execution issued against [the debtor] has been levied by seizure of his property under process in an action or in any civil proceeding in the High Court, Sessions Court or Magistrates Court ...

Paragraph (e) also existed in the 1959 Ordinance. After expressly mentioning those three courts in para (e), the draftsman of the 1959 Ordinance or the 1967 Act would still have remembered, when he came shortly after to para. (i), that he had thought specifically of those courts shortly before, and therefore if, for para (i), he had intended to include a Syariah Court in connection with the final judgment or final order, he would have expressly included it.

As in my judgment the final judgment or final order mentioned in para (i) does not include that of a Syariah Court, the bankruptcy notice was bad, there was no act of bankruptcy under para (i) and there was no basis for the bankruptcy petition.

I dismiss the appeal with costs.

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